

Message Text

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TO AMEMBASSY BERLIN
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AMEMBASSY BRASILIA
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AMEMBASSY BUENOS AIRES
AMEMBASSY CANBERRA
AMEMBASSY THE HAGUE
AMEMBASSY HELSINKI
AMEMBASSY ISLAMABAD
AMEMBASSY LIMA
AMEMBASSY LONDON
AMEMBASSY MADRID
AMEMBASSY MEXICO CITY
AMEMBASSY MOSCOW
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AMEMBASSY OTTAWA
AMEMBASSY PANAMA
AMEMBASSY PARIS
AMEMBASSY QUITO
AMEMBASSY STOCKHOLM
AMEMBASSY TUNIS
INFO AMEMBASSY VIENNA
USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 203582

USIAEA ALSO INFO USEEC

E.O. 11652: GDS

TAGS: MNUC, PARM, ENRG

SUBJECT: CONVENTION ON PHYSICAL PROTECTION OF NUCLEAR MATERIALS

1. U.S. IS PREPARING FOR THE THIRD MEETING (SEPTEMBER 4-8, 1978), ON CONVENTION ON PHYSICAL PROTECTION OF NUCLEAR MATERIAL. THIS IS SPECIAL MEETING FOR THE PURPOSE OF DISCUSSING, AND HOPEFULLY REACHING A CONSENSUS, ON THE SCOPE OF THE CONVENTION. THIS MEETING MUST BE SUCCESSFUL IF WE ARE TO HAVE REASONABLE CHANCE OF CONCLUDING WORK ON CONVENTION AT FINAL MEETING THAT IS SCHEDULED FOR FEBRUARY 5-16, 1979. THIS TELEGRAM REQUESTS EMBASSIES TO APPROACH HOST GOVTS ON SCOPE ISSUE, WITH VIEW TO ENHANCING CHANCE THAT SEPTEMBER MEETING WILL BE SUCCESSFUL.

2. DRAFT CONVENTION (WHICH IS A U.S. INITIATIVE) IS INTENDED TO ENHANCE PHYSICAL PROTECTION OF CIVILIAN NUCLEAR CONFIDENTIAL

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MATERIAL IN USE, STORAGE AND TRANSIT. UNDER DRAFT, PARTIES WOULD AGREE TO (A) MAINTAIN ADEQUATE PHYSICAL PROTECTION DOMESTICALLY, (B) REQUIRE SUCH PROTECTION DURING INTERNATIONAL TRANSPORT AS A CONDITION OF IMPORT OR EXPORT, (C) ASSIST EACH OTHER IN RECOVERY OF LOST OR STOLEN MATERIAL AND (D) ESTABLISH PUNISHABLE OFFENSES DEALING WITH THEFT OF NUCLEAR MATERIAL, ETC., SOME OF THESE OFFENSES TO BE SUBJECT TO EXTRADITION.

3. MOST IMPORTANT ISSUES THAT MUST BE RESOLVED AT SEPTEMBER MEETING ARE: (A) WHETHER, AND TO WHAT EXTENT, CONVENTION SHOULD INCLUDE ANY OBLIGATIONS CONCERNING DOMESTIC PHYSICAL PROTECTION (POINT A IN PREVIOUS PARA) OR RATHER DEAL SOLELY WITH PHYSICAL PROTECTION DURING INTERNATIONAL TRANSPORTATION OF NUCLEAR MATERIAL; (B) TO WHAT EXTENT NUCLEAR MATERIAL IN MILITARY USE SHOULD BE ADDRESSED IN CONVENTION, IF AT ALL. PRIOR TO PREVIOUS MEETINGS ON THIS CONVENTION, DEPT HAS REQUESTED CERTAIN OF ADDRESSEE POSTS TO APPROACH HOST GOVTS ON THESE SAME MATTERS (STATE 76379 OF MARCH 24, 1978 AND STATE 18745 OF JANUARY 24, 1978), AND THESE APPROACHES HAVE BEEN OF ASSISTANCE.

4. DOMESTIC APPLICATION OF CONVENTION

A. BACKGROUND:

CURRENT TEXT OF CONVENTION CONTAINS A BRACKETED

ARTICLE (ARTICLE 3) UNDER WHICH EACH STATE PARTY WOULD BE REQUIRED TO "TAKE APPROPRIATE MEASURES WITHIN THE FRAMEWORK OF ITS NATIONAL LAW" TO INSURE THAT NUCLEAR MATERIAL WITHIN ITS TERRITORY IS PROTECTED AT LEVELS SET FORTH IN AN ANNEX. THESE LEVELS ARE BASICALLY DRAWN FROM PHYSICAL PROTECTION ANNEX (ANNEX B) TO THE NUCLEAR SUPPLIERS' GUIDELINES (IAEA DOCUMENT INFCIRC/254) WHICH PROVIDES AGREED LEVELS OF PHYSICAL PROTECTION FOR NUCLEAR SUPPLIERS TO REQUIRE OF THEIR CUSTOMERS; THESE MORE GENERAL "LEVELS" CONFIDENTIAL

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WERE DRAFTED SO THAT THEY WOULD DESCRIBE THE OBJECTIVE OF PHYSICAL SECURITY SYSTEMS AND BE CONSISTENT WITH THE MORE SPECIFIC "MEASURES" (E.G., TYPES OF FENCES AND NUMBERS OF GUARDS) SET FORTH IN THE IAEA PHYSICAL PROTECTION DOCUMENT (INFCIRC/225/REV. 1). BRACKETED ARTICLE ALSO INCLUDES PROVISION FOR COOPERATION AND CONSULTATION ON DESIGN, MAINTENANCE AND IMPROVEMENT OF NATIONAL SYSTEMS OF PHYSICAL PROTECTION.

AT APRIL SESSION, BRAZIL, TUNISIA, ECUADOR, PAKISTAN, BELGIUM AND FRANCE FAVORED DELETION OF BRACKETED ARTICLE. VARIOUS CONCERNS WERE RAISED BY ARGENTINA AND INDIA. MEXICO AND FRG PREFERRED BROADER SCOPE, I.E., INCLUSION OF ARTICLE, BUT INDICATED WILLINGNESS TO DROP IT IF NECESSARY TO REACH AGREEMENT. HUNGARY, USSR, AUSTRALIA, GDR, NETHERLANDS, CANADA AND UK ALL APPEAR TO FAVOR RETAINING BROAD SCOPE OF CONVENTION, I.E., RETAINING DOMESTIC COVERAGE IN ARTICLE 3. WE FEAR THAT A PROVISION IN CONVENTION SETTING FORTH STANDARDS LESS STRICT THAN THOSE U.S. IS REQUIRED TO OBTAIN BILATERALLY COULD WEAKEN OUR ABILITY TO OBTAIN STRONGER COMMITMENTS BILATERALLY,

SINCE OTHER COUNTRIES MIGHT ARGUE THAT THE CONVENTION ESTABLISHED AN INTERNATIONALLY AGREED STANDARD AND THAT USG DEMANDS FOR STRICTER STANDARD WERE UNREASONABLE. AUSTRALIA HAS PROPOSED, AS A MINIMUM, THAT CONVENTION PROVIDE FOR A REVIEW CONFERENCE TO PERMIT INSERTION OF SATISFACTORY PROVISION AT LATER DATE; USG COULD SUPPORT A SUITABLE PROVISION ON THIS MATTER.

WE RECOGNIZE THAT U.S. POSITION (BELOW) MAY RESULT IN PRESSURE TO LIMIT OTHER PROVISIONS IN DRAFT CONVENTION THAT ESTABLISH OFFENSES AND PROCEDURES FOR EXTRADITION. CONFIDENTIAL

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THESE PROVISIONS CURRENTLY COVER BOTH DOMESTIC AND TRANS-PORT OFFENSES. WE WANT TO KEEP THESE PROVISIONS AS CURRENTLY DRAFTED, EVEN IF ARTICLE 3 IS DELETED.

B. TALKING POINTS:

-- USG BELIEVES IT IMPORTANT THAT WE WRAP UP WORK ON CONVENTION PROMPTLY, AND WE BELIEVE THAT A CONVENTION EVEN LIMITED TO INTERNATIONAL TRANSPORT WOULD BE OF SUBSTANTIAL VALUE BY PROVIDING MECHANISMS FOR COOPERATION IN INSURING ADEQUATE PHYSICAL SECURITY WAS APPLIED AND FOR RECOVERY AND RETURN OF STOLEN OR LOST MATERIAL.

-- WHILE USG HAS BEEN STRONG SUPPORTER OF ALSO HAVING PROVISION (ARTICLE 3) ON DOMESTIC PHYSICAL PROTECTION, WE ARE NOT WILLING TO DELAY WORK BY CONTINUING TO INSIST ON THIS PROVISION. FURTHER, WE THINK PROVISION IS ALREADY SO WEAK THAT IT MAY NOT SUFFICE TO MEET ANY OF THE REQUIREMENTS OF USG, ON BILATERAL BASIS, FOR EXPORT OF NUCLEAR MATERIAL.

-- OUR CURRENT THINKING IS TO SEEK CONSENSUS AT SEPTEMBER MEETING ON A TEXT OF ARTICLE 3 STRONG ENOUGH TO MEET AT LEAST SOME OF U.S. EXPORT REQUIREMENTS FOR STATES ADHERING TO CONVENTION, BUT, IF THIS IS NOT POSSIBLE, AS NOW APPEARS LIKELY, WE PREFER DELETION OF ARTICLE 3 ENTIRELY IN INTEREST OF RAPIDLY CONCLUDING WORK ON CONVENTION.

-- FOR BRASILIA, TUNIS, QUITO, ISLAMABAD, BRUSSELS, PARIS, BUENOS AIRES AND NEW DELHI: YOU SHOULD INDICATE USG WILL BE READY TO ACCEPT CONVENTION LIMITED TO INTERNATIONAL TRANSPORTATION IF THIS ONLY WAY CONSENSUS CAN BE ACHIEVED AT SEPTEMBER MEETING.

-- FOR MEXICO, BONN, BUDAPEST, MOSCOW, CANBERRA,
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BERLIN, THE HAGUE, OTTAWA AND LONDON: YOU SHOULD URGE THEY COME TO SEPTEMBER MEETING WITH FLEXIBILITY TO AGREE

TO CONVENTION LIMITED TO INTERNATIONAL TRANSPORTATION, ASSUMING IT PROVES IMPOSSIBLE TO ACHIEVE CONSENSUS ON ANY OTHER BASIS.

-- FOR CANBERRA: YOU SHOULD EMPHASIZE RISK WE RUN OF WEAKENING OUR ABILITY AS NUCLEAR EXPORTERS TO OBTAIN ADEQUATE COMMITMENTS ON PHYSICAL PROTECTION IN THE EVENT AN INADEQUATE ARTICLE 3 WERE ADOPTED.

-- FOR BUENOS AIRES, QUITO, AND NEW DELHI (COUNTRIES FAVORING BOTH DELETION OF ARTICLE 3 AND COVERAGE OF MILITARY PURPOSE NUCLEAR MATERIAL): YOU SHOULD LINK OUR WILLINGNESS TO COMPROMISE ON ARTICLE 3 WITH THEIR WILLINGNESS TO ACCEPT OUR POSITION ON MILITARY PURPOSE NUCLEAR MATERIAL AS SET FORTH BELOW.

5. MILITARY PURPOSE NUCLEAR MATERIAL

A. BACKGROUND:

DRAFT CONVENTION CONTAINS BRACKETED ARTICLE (ARTICLE 2) THAT PROVIDES IT SHALL NOT APPLY TO NUCLEAR FACILITIES, MATERIAL AND TRANSPORTS USED FOR MILITARY PURPOSES. THIS REFLECTS STRONGLY HELD USG POSITION. NUCLEAR MATERIAL USED FOR MILITARY PURPOSES IS SUBJECT TO INDEPENDENT SYSTEM OF PROTECTION, AND MUCH TIGHTER CONTROL THAN IS NUCLEAR MATERIAL IN CIVILIAN USE. WE HAVE BEEN CONCERNED THAT ANY STANDARDS ESTABLISHED BY CONVENTION RELEVANT TO PHYSICAL PROTECTION OF MILITARY NUCLEAR MATERIAL COULD LEAD TO REQUESTS FOR INFORMATION CONCERNING MILITARY CONFIDENTIAL

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NUCLEAR ACTIVITIES UNDER PRETEXT OF INSURING COMPLIANCE WITH STANDARDS. HOWEVER, IN INTEREST OF MEETING CONCERNS EXPRESSED BY OTHERS, WE HAVE IN PREVIOUS MEETING PRIVATELY AGREED IF NECESSARY TO INSERTION OF PREAMBULAR PARA OR PARAS SUCH AS "RECOGNIZING THAT STRINGENT PHYSICAL PROTECTION MEASURES ARE ALREADY BEING APPLIED TO NUCLEAR MATERIAL USED FOR MILITARY PURPOSES." FYI: USG CANNOT ACCEPT DISTINCTIONS BASED ON MILITARY VS. CIVILIAN CONTROL OF NUCLEAR MATERIAL SINCE IN U.S. MILITARY PURPOSE NUCLEAR MATERIAL IS OFTEN UNDER DOE CIVILIAN CONTROL. END FYI.

AT APRIL MEETING, ARGENTINA, PERU, ECUADOR, PANAMA, ROMANIA, INDIA, FINLAND AND SPAIN URGED THAT CONVENTION COVER MILITARY PURPOSE NUCLEAR MATERIAL. WE TALKED WITH THESE COUNTRIES PRIVATELY AND BELIEVED WE MADE SOME HEADWAY. TOWARD END OF APRIL SESSION, SPAIN, AUSTRALIA AND FINLAND EACH CIRCULATED PROPOSED PREAMBULAR PARAS BASED ON ASSUMPTION THAT TEXT ITSELF WOULD CONTINUE TO EXCLUDE MILITARY PURPOSE NUCLEAR MATERIAL. WE HAVE SOME

INDICATION THAT UK COULD ACCEPT SUCH PREAMBULAR PARA OR PARAS, BUT USSR AND FRANCE HAVE PRIVATELY TOLD US THEY COULD NOT, BUT HAVE NOT TAKEN THIS POSITION PUBLICLY. USG IS UNWILLING TO CONTINUE TO TAKE THE BRUNT OF PUBLICLY OPPOSING INSERTION OF PREAMBULAR PARAS OUT OF DEFERENCE TO USSR AND FRANCE, WHEN THESE COUNTRIES DO NOT EVEN SPEAK UP OR PARTICIPATE IN LOBBYING ON THIS ISSUE.

0. TALKING POINTS:

-- CONSENSUS IS LIKELY TO EMERGE BASED ON NEGOTIATED PREAMBULAR PARAS, WITH TEXT OF CONVENTION CONTINUING TO EXCLUDE MILITARY PURPOSE NUCLEAR MATERIAL.

-- USG IS WILLING TO WORK IN THIS DIRECTION.

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-- WE FAVOR RAPID CONCLUSION OF CONVENTION COVERING ONLY AREAS OF CONSENSUS AND IT IS CLEAR THAT CONSENSUS DOES NOT INCLUDE COVERAGE OF MILITARY PURPOSE NUCLEAR MATERIAL.

-- FOR LONDON: WE WOULD LIKE CONFIRMATION THAT UK WILL BE WILLING TO WORK WITH US ON APPROPRIATE PREAMBULAR PARA.

-- FOR MOSCOW AND PARIS: WE WOULD LIKE USSR AND FRANCE TO JOIN US IN THIS POSITION. WE BELIEVE THAT SUBSTITUTING RELATIVELY INNOCUOUS PREAMBULAR PARAS FOR ANY COVERAGE OF MILITARY PURPOSE NUCLEAR MATERIAL IS DESIRABLE AND WILL PERMIT RAPID CONCLUSION OF WORK ON CONVENTION.

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